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In The

Supreme Court of the United States

October Term, 1965

No. 415

CAROLYN BRADLEY, ET AL.,
Petitioners,

v.

THE SCHOOL BOARD OF THE CITY OF RICHMOND, VIRGINIA, ET AL.,
Respondents.

Brief In Opposition To Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

J. ELLIOTT DRINARD
City Hall
Richmond, Virginia
City Attorney

HENRY T. WICKHAM
1407 State-Planters Bank Bldg.
Richmond, Virginia
Special Counsel

Attorneys for Respondents

August 26, 1965

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PRELIMINARY STATEMENT

Respondents take no exception to the Petitioners' statement of the case as set forth in their petition. However, the real questions presented to the Court are not as stated by Petitioners.

THE QUESTION PRESENTED

Should this Court grant a writ of certiorari when Petitioners have an adequate and speedy remedy in the district court for determination of the questions here presented?

ARGUMENT

Petitioners Have Adequate Remedy In District Court

Petitioners apparently concede in their petition that the Respondents' plan of assignment is adequate. They complain only of the fact that a plan of faculty desegregation was not presented to the district court.

In July, 1962, the evidence before the district court was that the faculties were segregated. On appeal the case was reversed in part and remanded. The question of faculty segregation was not there argued by Petitioners or discussed in the opinion of the Fourth Circuit. *Bradley* v. *School Board,* 317 F. (2d) 429 (1963).

On July 29, 1963, and again on December 20, 1963, the district court heard evidence concerning the Respondents' plan of assignment. At both hearings the Superintendent of Schools, respondent H. I. Willett, was called as a witness on behalf of the Petitioners (R. Vol. III and IV). During these examinations no questions were directed toward, and no information was sought concerning faculty segregation or plans for faculty integration.

The district court approved the plan of assignment by memorandum opinion and order dated March 16, 1964, and retained the case "on the docket with leave of any party to seek further relief." (Petitioners' App., p. 38a).

The court below affirmed, recognizing Petitioners' right to raise the question of the assignment of teachers, but pointing out that resolution of such a question "should await a full hearing on the merits." (345 F. (2d) at p. 320)

In the opinion of the court below it was noted that "the question of assignment of teachers was ignored in the hearings below," and in this connection the court stated:

"* * * There has been no inquiry as to the possible relation, in fact or in law, of teacher assignments to discrimination against pupils, nor has there been any inquiry as to the impact of such an order as the plaintiffs seek upon the administration of the schools and upon the teachers and the administrative personnel. The undeveloped record furnishes no basis for judgment apart from a conviction, in agreement with the Fifth Circuit, that decision cannot precede a full and complete inquiry in the District Court into the merits.

"When there has been no inquiry into the matter, it cannot be said that the plaintiffs have discharged the burden they must shoulder of showing that such assignments effect a denial of their constitutional rights.

"Whether and when such an inquiry is to be had are matters with respect to which the District Court also has a large measure of discretion. The Fifth and Sixth Circuits have so held, and we agree. When direct measures are employed to eliminate all direct discrimination in the assignment of pupils, a District Court may defer inquiry as to the appropriateness of supplemental measures until the effect and the sufficiency of the direct ones may be determined. The possible relation of a reassignment of teachers to protection of the constitutional rights of pupils need not be determined when it is speculative. When all direct discrimination in the assignment of pupils has been eliminated, assignment of teachers may be expected to follow the racial patterns established in the schools. An earlier judicial requirement of general reassignment of all teaching and administrative personnel need not be considered until the possible detrimental effects of such an order upon the administration of the schools and the efficiency of their staffs can be appraised along with the need for such an order in aid of protection of the constitutional rights of pupils." (345 F. (2d) at pp. 320-321)

In the dissenting opinion of the court below it was observed that there was no legal reason why desegregation of faculties and student bodies "may not proceed simultaneously" and that "the matter should be inquired into promptly." (345 F. (2d) at p. 324)

As previously pointed out, this case has been retained on the docket of the district court and the Petitioners may seek further and immediate relief there.

Petitioners have not inquired into Respondents' practice concerning assignment of faculties since July, 1962. Since that time, public records and published reports would indicate that visiting white teachers teach in integrated schools and so-called Negro schools; that the faculties in the public school system were integrated during the summer sessions of 1964 and 1965, and that there will be integrated faculties for the school session beginning in September, 1965.

Petitioners also know, or should know, that the Respondents have met the standards established by the United States Commissioner of Education, as authorized by Title VI of the Civil Rights Act of 1964, concerning desegregation of faculty and staff, and have received regular federal assistance and one special grant. Likewise, the Respondents have qualified for and received two special grants from the United States Office of Economic Opportunity under Title II A of the Economic Opportunity Act of 1964. These grants were received for the Head Start Program and the Community Action Program.

The opinion of the court below is clear and no doubts are cast on the question of faculty desegregation as contended by Petitioners. Both the majority and the dissenters clearly point to the route over which Petitioners may travel. The proper forum to raise the questions presented by Petitioners is the district court. A speedy and adequate remedy is available there.

CONCLUSION

Petitioners appear to be requesting this Court to render an advisory opinion on a record that is void of facts concerning the assignment of faculty and staff in the public school system. They point to no decision on the same matter in conflict with the decision rendered below. No question of federal law was decided in the court below which has not been decided by this Court. Finally, the court below decided no federal question in a way which conflicts with applicable decisions of this Court.

In view of the aforegoing it is submitted that the petition for certiorari should be denied.

Respectfuly submitted,

J. ELLIOTT DRINARD
City Hall
Richmond, Virginia
City Attorney

HENRY T. WICKHAM
1407 State-Planters Bank Bldg.
Richmond, Virginia
Special Counsel

Attorneys for Respondents

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